

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM HELMER,

Plaintiff,

Case No. 09-11697

v.

Honorable Patrick J. Duggan

BRIAN GUEST, KATHLEEN SOLOMON,
OSCODA COUNTY, KEVIN GRACE,
DAVE STENZEL, ED POKRZYWNICKI,
and RONALD NIGHTINGALE,

Defendants.

ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on December 21, 2011.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On May 4, 2009, William Helmer (“Plaintiff”), a state prisoner currently incarcerated at the Bellamy Creek Correctional Facility in Ionia, Michigan, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Before the Court is Defendant Ronald Nightingale’s motion to dismiss or for summary judgment, filed on March 23, 2011 pursuant to Federal Rules of Civil Procedure 12(b)(6) and 56. The Court has referred this matter to Magistrate Judge Mona K. Majzoub for all pretrial proceedings.

On October 20, 2011, Magistrate Judge Majzoub issued a Report and Recommendation (“R&R”) in which she recommends that this Court grant Nightingale’s

motion pursuant to Rule 12(b)(6) for failure to state a claim. Magistrate Judge Majzoub concludes that Plaintiff has failed to allege sufficient facts to support his claims that Nightingale violated his due process and equal protection rights. As for Plaintiff's retaliation claim, Magistrate Judge Majzoub concludes that Plaintiff has failed to allege facts supporting a finding of retaliatory motive. Magistrate Judge Majzoub recommends dismissal of Plaintiff's malicious prosecution claim because Plaintiff has not alleged that a criminal prosecution was brought against him.

At the conclusion of the R&R, Magistrate Judge Majzoub advises the parties that they may object and seek review of the R&R within fourteen days of service upon them. *Id.* She further advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right of appeal." *Id.* (citing *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981)). No objections to the R&R have been filed.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Majzoub. Accordingly,

IT IS ORDERED that Defendant Ronald Nightingale's motion to dismiss is granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

D. Randall Gilmer, Esq.
G. Gus Morris, Esq.

Mark E. Donnelly, A.A.G.
Magistrate Judge Mona K. Majzoub

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